

DEFINITIONS AND LEGAL TERMS

ACQUITTAL

...when a criminal defendant is found "not guilty" of a crime by a judge or jury. An acquittal is not a declaration of the accused's "innocence"; it is a verdict that a prosecutor failed to prove the accused's guilt beyond a reasonable doubt.

ADJOURNMENT

...postponing or rescheduling a case or court session until another date or time, usually due to the unavailability of witnesses.

ADVERSARY PROCEEDING

...actions contested by opposing parties.

AFFIDAVIT

...a written statement of fact that is verified by oath or affirmation before a notary public.

ALIBI

...a "lack of presence" defense. In criminal law, the defendant need not prove that he or she was elsewhere when the crime happened; he or she need only notify the prosecutor of his or her intent to claim an alibi (along with a list of alibi witnesses). Ultimately, the prosecutor must prove beyond a reasonable doubt that the defendant was present (i.e., a prosecutor must disprove a claimed alibi).

APPEAL

...a request to a supervisory court, usually composed of a panel of judges, to overturn the legal ruling of a lower court.

ARRAIGNMENT

...a criminal defendant's first appearance before a judge. The primary purpose of an arraignment is to inform the defendant of what charge he or she is facing and for the defendant to enter a plea.

BAIL

...Bond money paid to a court, by or on behalf of a criminal defendant, as security that, when released from jail, the defendant will appear at future hearings. If another person posts the bail money, then that third party

vouches that the defendant will appear at future court dates. Bail can be forfeited if the defendant fails to appear or violates release conditions.

BATTERY

...causing bodily harm to another intentionally without consent. The penalty for battery increases with the amount of bodily harm caused.

BENCH TRIAL

...a trial held before a judge and without a jury.

BIND-OVER

...a finding at a preliminary examination in a felony case that sufficient evidence exists to require a trial on the charges made against the defendant.

BOND

...a debt intended to insure the defendant's future appearances in court. The amount of the bond is set by a judge or court commissioner. Factors influencing the amount set include the seriousness of the charge, the defendant's criminal history, and the defendant's ties to the community. There are two general types of bonds:

Personal recognizance bonds (a.k.a. "PR" bonds, or "signature bonds") do not require the defendant or a third party to pay money to the court, unless the defendant later fails to appear.

Cash bonds require the full amount of the bond to be paid in cash before the defendant can be released. If the defendant appears at all future court dates, most if not all of the monies are returned to the person posting the bond.

BURDEN OF PROOF

...the duty to establish by evidence a requisite degree of belief concerning a fact in the mind of a trier of fact. The duty to establish facts in an adversary proceeding. Different burdens of proof exist in the law:

Prima facie evidence: evidence which is good and sufficient "on its face" to establish a given fact when unrebutted or not contradicted.

Probable cause

Preponderance of the evidence: the burden of proof in civil cases. Evidence which, as a whole, shows that the fact sought to be proved is more probable than not. Evidence which is more credible and convincing to the mind. It is generally visualized as that side of the

dispute toward which the scales tip when the credible evidence is weighed by the trier of fact. Something more than 50% of the credible evidence.

Clear and convincing evidence: the burden of proof is selected proceedings, such as termination of parental rights. A measure of proof which produces a firm belief as to the allegations. It is difficult to quantify, but it is more than a "preponderance" and less than "beyond a reasonable doubt."

Beyond a reasonable doubt: the degree of belief a criminal juror (or the judge in a bench trial) must have regarding all factual elements of a charged crime. No doubt, based on reason and common sense, can exist as to any fact needed to be proved.

CHALLENGES (Jury Selection)

...a method for striking a prospective juror. The Wisconsin Rules allow two types of juror challenges: for cause (unlimited number) and peremptory (limited number depending on the severity of the crime on trial). Appropriate challenges for cause exist when the juror is shown to be biased for or against a party, is related to a trial participant, etc. No reason need be announced for a peremptory challenge.

CHIPS

...Children in Need of Protection and Services

CIRCUIT COURT

...Wisconsin's highest level trial court, with the broadest range of powers.

CIRCUMSTANTIAL EVIDENCE

...indirect evidence that implies something occurred but does not directly prove it. For example, circumstantial evidence of embezzlement includes proof that the defendant-employee made several big-ticket purchases in cash around the time of the alleged embezzlement.

CIVIL CASE

...a case between private litigants concerning personal wrongs, generally where the losing party must compensate the prevailing party with money or other property. Examples of civil cases include divorces, personal injury, landlord-tenant, small claims and contract or property disputes. A civil plaintiff may be also be asking the court to tell the defendant to stop some behavior or to do a

specific thing. Both the plaintiff and the defendant may be represented by an attorney.

CIVIL OFFENSE

...a non-criminal violation of a law prosecuted by the State or a local government unit. A person cannot usually be sent to jail for a civil offense. The most common example is a traffic citation, like speeding. The penalty for a civil offense is payment of fines, costs, and fees. For a traffic civil offense, points may be added to the driving record.

COMMON LAW

...a body of legal principles which derives its authority solely from usages and customs of ancient times, or from the judgments and decrees of courts recognizing, affirming, and enforcing such usages and customs; particularly the ancient unwritten law of England. Common law is to be distinguished from "statutory law," which is enacted by a legislative body such as Congress or a state legislature.

COMPLAINT

...the document on which criminal misdemeanors are charged in circuit court, as well as the initial charging document for felonies.

CONCURRENT SENTENCE

..upon conviction for multiple crimes, a criminal sentence served at the same time as another criminal sentence, rather than one after the other.

CONSECUTIVE SENTENCE

...upon conviction for multiple crimes, criminal sentences that must be served one after the other, rather than at the same time.

CONVICTION

...a judge or jury's decision that the accused person is guilty of the crime, meaning that the prosecution won and the defense lost.

COURT APPOINTED ATTORNEY

...legal counsel assigned by the court to represent an indigent criminal defendant. A court-appointed attorney is not necessarily a "free" attorney; the court can order that some or all of the attorney's bill be reimbursed.

CRIMINAL CASE

... a charge filed by a prosecutor against a defendant concerning violation of a criminal law. The act of violating a criminal law is an offense against the

community, not a private wrong. Examples of criminal cases include theft, murder, and battery.

CROSS EXAMINATION

...the questioning of a witness by a party other than the one who called that witness to the stand.

DEFENDANT

...a person who has been formally charged with committing a crime.

DELINQUENT

...a crime committed by a minor under the age of 17. Juvenile delinquency offenses are prosecuted in the juvenile court in Wauwatosa. See the Juvenile Justice section of this Web Site for more information.

DIRECT EVIDENCE

...evidence that stands on its own to prove an alleged fact, such as testimony by a teller that she saw the defendant pointing a gun at her and heard him demand money during a bank robbery.

DIRECT EXAMINATION

...the questioning of a witness by the party who first called the witness to the stand.

DOUBLE JEOPARDY

...being tried twice for the same offense. Jeopardy `attaches' (begins) in a jury trial when the selected jury is sworn, and attaches in a bench trial when the first witness is sworn.

DRUNK DRIVING

See "OWI"

EX-PARTE

...Latin phrase that means "by or for one party." Refers to situations in which only one party (and not the adversary) appears before a judge. Such meetings are often forbidden.

EX-PARTE ORDER

...an order entered without giving the party affected by the order an opportunity to be heard in court before the order is issued. An emergency order used when one party could be irreparably harmed by waiting for a hearing date. The orders are generally short-term, and hearings are such

scheduled soon after the order is entered to give the other party a chance to be heard.

FELONY

...a crime carrying more than one year possible incarceration.

GRAND JURY

...a group of citizens convened in a criminal case to consider the prosecutor's evidence and determine whether probable cause exists to prosecute a suspect for a felony. Grand juries are rarely used in Wisconsin state courts, but they are used in federal court.

GUARDIAN AD LITEM

...a person appointed by the court to protect the legal interests of an infant or an incompetent adult, or a missing person who is involved in a court case. The court will appoint a guardian ad litem in cases of juvenile abuse or neglect. The "GAL" may be an attorney.

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HABEAS CORPUS

...a writ (order) to bring a person before a court. In its most common usage, the writ directs a warden or jailer to bring a prisoner or person detained so that the court may determine whether such person is lawfully confined.

HEARSAY

...a statement made outside of court (i.e., not from the witness stand at the present proceeding) that is offered into evidence not merely to prove that the statement was made but to prove that it was true. Dozens of long-established exceptions exist to the general rule that hearsay statements are inadmissible in court; the exceptions are based on circumstances where the out-of-court statements carry a likelihood of trustworthiness (e.g., deathbed statements, self-incriminating statements, statements made to doctors about medical conditions, etc.).

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INDICTMENT

...a formal accusation of a felony, issued by a grand jury after considering evidence presented by a prosecutor. Grand juries are rarely used in the court of the State of Wisconsin, but they are common in federal court.

INFORMATION

...the document on which criminal felony charges are filed in circuit court after a preliminary examination bind-over or waiver.

JURISDICTION

...the power of the court to decide a case before it, which depends on the type of case and how closely connected the parties are to the county where the court is located. [See also venue.]

JUVENILE

...a youth under the age of 17.

JUVENILE COURT

...branches of the circuit court where delinquency cases and cases involving Children in Need of Protection and Services are heard (CHIPS). In Milwaukee County, juvenile court is in Wauwatosa.

LARCENY

...stealing. The unlawful taking and carrying away of property of another with the intent to keep it from the owner.

MINOR

...a youth under the law's age of majority. Procedurally, a youth is considered a minor regarding criminal offenses until his or her 17th birthday, and those offenses are usually handled in juvenile court; offenses committed after his or her 17th birthday are handled in circuit court.

MISDEMEANOR

...a crime carrying maximum jail time of one year or less in jail (not prison). The most common misdemeanors are Battery, Retail Theft, Disorderly Conduct, and Carrying a Concealed Weapon.

MOTION

...a request to a judge for an order or a finding. Usually, motions are made in writing.

MOTIVE

...whether the defendant had a reason to commit the alleged crime...but a reason to commit the crime, by itself, is not enough to find a person guilty of a crime. Motive is not an element of a crime that a prosecutor must prove.

MUNICIPAL COURT

...local courts which hear cases involving violations of local ordinances. The District Attorney does not appear in these courts. Instead, municipalities are represented by their City Attorney.

NEGLIGENCE

... carelessness...not taking reasonable care under circumstances as they were at the time...something that a sensible person would know could hurt someone.

NO CONTEST PLEA

...also known as a nolo contendere plea...A plea in which the facts supporting the crime's elements come from a source other than the defendant's own words in court (generally, from police investigation reports, witnesses statements, photographs, etc.). A "nolo" plea is used when the defendant cannot recall his criminal actions (sometimes due to intoxication), or his verbal plea from a traditional guilty plea would be used in a potential civil law suit. Regardless, the defendant is treated by a sentencing judge the same as if he was convicted via a guilty plea or trial verdict.

ORDER

...a decision of a court usually made in writing.

OWI (Operating Under the Influence of Intoxicant)

...commonly called "drunk driving." A person driving a vehicle while significantly or substantially affected by alcohol. First offenses are civil and carry no jail time. Subsequent offenses are misdemeanors, punishable by jail, fines, community service, 6 points assessed on the driver's record, and a mandatory license suspension. OWI can become a felony if the driver has been convicted of OWI at least four times since 1989.

ORDINANCE

...a legislative enactment by the governing body of a municipality or county, such as the City of Milwaukee.

PAROLE

...the conditional release from prison of a convict before the expiration of a felony sentence. The parolee (the released person) need not serve the remainder of his sentence, unless he violates terms of his release. The parolee is under the supervision of a state parole officer during the parole period.

PATERNITY

...establishing legal "fatherhood."

PERJURY

...knowingly making a material false statement while under oath to tell the truth.

PLAINTIFF

...the person who originally filed a court action.

PLEA

...the defendant's response to a criminal charge (guilty, not guilty or no contest).

PLEA AGREEMENT/BARGAIN

...an agreement between the prosecutor and the defendant for the defendant to plead guilty or no-contest under certain terms and conditions. The agreement could include the defendant pleading to all pending charges with a sentence agreement, or pleading to less than all of his pending charges, or pleading to a less serious charge, or pleading guilty to one or more pending charges in exchange for dismissal of other unrelated charges. All plea agreements must be approved by the judge. Plea agreements are a means of arriving at a reasonable disposition without the necessity of a trial.

PRELIMINARY EXAMINATION

...a circuit court evidentiary hearing for felonies where the prosecutor must present evidence amounting to at least probable cause that the charged felony crime(s) in fact occurred and that the defendant committed it (them). Generally, the prosecutor presents just a fraction of the total evidence and witnesses. The defendant (or his attorney) can cross-examine the State's witnesses, and present his or her own proof to refute the State's evidence. If the prosecutor meets the burden of proof, the case is "bound over" to circuit court on an information for trial.

PRETRIAL CONFERENCE

...a scheduled meeting between the prosecutor and the defendant (or defendant's attorney), generally weeks before the trial date, to discuss trial issues, etc. The judge does not actively participate in misdemeanor pretrial conferences in circuit court, unless the meeting results in a plea.

PROBABLE CAUSE

...facts and circumstance sufficient to convince a person of reasonable caution that an offense has been committed; mere suspicion or belief, unsupported by facts or circumstances, is insufficient. A search warrant may be authorized, or a warrant-less arrest may be made, upon probable cause.

PROBATION

...a discretionary sentencing option for most misdemeanor and felony convictions where the defendant avoids some/all incarceration, and is released back into the community under the supervision of a probation officer for a specific time period, with many rules to follow. Some rules are standard (i.e., not to violate any more laws), while others are specific to the defendant or crime (i.e., alcohol counseling). If the defendant violates any term of probation, the assigned probation officer (or the prosecutor) can ask the sentencing judge to impose additional penalties.

PRO SE

...a person who represents himself/herself in court without an attorney. The terms comes from the Latin phrase "in propria persona."

PROSECUTOR

...an elected or appointed official vested with authority by a constitution, statute or ordinance to represent the public interest and take legal action against persons violating state criminal laws. In other states they are often called State's Attorneys, County Attorneys, or Commonwealth Attorneys.

QUASH

...to nullify, void or declare invalid.

REASONABLE DOUBT

...a fair, honest doubt based on the evidence produced at trial (or missing from the proof). A reasonable doubt must be based on reason and common sense, not on speculation.

RESISTING/OBSTRUCTING A POLICE OFFICER

...knowingly and intentionally obstructing or resisting a law enforcement officer who is engaged in lawful acts. The defendant's acts must have actually interfered with the officer in carrying out those duties.

RESTITUTION

...payments ordered by the judge to repay victims for economic losses incurred as the result of the crime (property loss or injuries). Does not include compensation for pain and suffering, emotional distress or other non-economic damages that can result in compensation through a civil law suit.

SELF DEFENSE

...a legally-justified use of force to protect one's self, another person, or property against some injury attempted by another person. In order to have the right to repeal force with force, the defendant (1) must have honestly and reasonably believed that s/he had to use force for protection (2) may use only the type and degree of force that seems necessary for protection at the time based on the circumstances known to him or her, (3) must not have acted wrongfully and brought on the assault (i.e., provoked the attack). In Wisconsin, a prosecutor has the burden of disproving a defendant's self-defense claim beyond a reasonable doubt.

SEQUESTRATION

...a procedure to shelter a trial participant from outside influences, also called exclusion. The term most frequently applies to witnesses, and prevents them from watching court proceedings and testimony (or talking outside the courtroom to other witnesses) before they actually testify. In very rare cases, a jury can be sequestered during part of all of a trial.

SHOPLIFTING

...also called Retail Theft in Wisconsin.

SMALL CLAIMS COURT

...a division of the circuit court in which civil lawsuits seeking a maximum \$5,000 damages is heard. Like television's The People's Court, the parties often represent themselves without attorneys. Jury trials are not allowed. The judge's or magistrate's decision can be appealed. The District Attorney's Office generally does not appear in small claims matters.

STARE DECISIS

...the doctrine that once a principle of law has been determined to be applicable to certain facts, that principle will be followed in future cases involving substantially identical facts. This body of "case law" -- along with common law and statutes -- becomes the laws of the land.

STATUTE OF LIMITATIONS

...deadlines set by statute for filing criminal charges or civil lawsuits within a certain time after events occur that are the source of the charge or claim. The time limit on the right to seek relief in court. For misdemeanors, the statute of limitations is generally three years and for felonies the statute of limitations is usually six years. Some offenses, such as homicides, have no statute of limitations.

SUBPOENA

...a court order requiring a person to appear in court and give testimony as a witness, and/or to produce documents.

SUPREME COURT

...the highest appeals court in Wisconsin. An appellant files an application for "leave to appeal" in the Supreme Court, which the court can grant (accept) or deny (reject) at its discretion. If an application is granted, the Supreme Court will hear the case; if denied, the decision made by the lower court remains unchanged. The Supreme Court usually selects cases involving important constitutional issues and questions of public policy. The Supreme Court also has administrative duties -- general administrative supervision of all courts in the state, establishing rules for practice and procedure in all Wisconsin courts, etc.

The Supreme Court consists of seven justices: the chief justice and six associate justices. The justices are elected to serve 10 year terms.

TRANSCRIPT

...the official record of the testimony adduced in a trial or hearing.

VENUE

...the geographic location (e.g., city or county) where an event occurred. A "change of venue" happens when a case is moved to a court in another county or to a court having other jurisdictional powers...generally because a fair trial cannot be had in the original court's location.

VICTIM

...a person or entity who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.

VOIR DIRE

...the process of jury selection, generally involving the judge and attorneys asking potential jurors about their experiences and beliefs. The purpose is to determine if the jurors are appropriate for sitting on the case at hand. This French term (pronounced "vwa dear") means "to speak the truth."

WARRANT

...a court order authorizing an arrest.

WITNESS

...a person who comes to court (sometimes by subpoena) and swears under oath to give truthful evidence.

WORK RELEASE

...a program where the defendant is permitted to maintain employment while residing in jail. The defendant leaves jail on work days only for his work hours, plus limited travel time. Also known as "Huber Law."